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STEFAN STEPHENSON-MOE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEFAN STEPHENSON-MOE, an
individual,

Plaintiff,

v.

SPLUNK, INC., a Delaware
Corporation,

Defendant.

Case No.:

COMPLAINT FOR DAMAGES:

**(1) VIOLATIONS OF 38 U.S.C. §
4301, *et seq.***

**(2) VIOLATIONS OF
CALIFORNIA MILITARY AND
VETERANS CODE § 394**

**FILING FEE WAIVED PER 38
U.S.C. § 4323(h)**

DEMAND FOR JURY TRIAL

Plaintiff, STEFAN STEPHENSON-MOE, hereby complains against Defendant,
SPLUNK INC., as follows:

1. This Complaint is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301, *et. seq.* (“USERRA”), California Military and Veterans Code §§ 394-395 (“MVC”), and Federal and state common law.

3. Count II of this complaint arises under California MVC § 394. The jurisdiction of this court as to this Count is conferred by 28 U.S.C. §1367(a).

5. At all times herein mentioned, Plaintiff Stefan Stephenson-Moe (“Plaintiff”) is a citizen of the United States and was a resident of the state of Florida. Plaintiff was employed by Defendant and was a member of the United States Army Reserve (“USAR”) as a Captain.

7. Plaintiff is informed and believes that Defendant SPLUNK INC. (“Splunk”) is incorporated under the laws of Delaware. Splunk’s principal place of business is located at 270 Brannan Street, San Francisco, California 94107. Splunk’s registered agent for service of process is listed by the California Secretary of State as Amanda Garcia located at 330 N. Brand Boulevard, Glendale, California 91203.

8. At all times relevant to the causes-of-action asserted herein, the Defendant has had continuing and systematic contacts with the State of California and is doing business in California, by among other things: maintaining its principal place of business in the state of California and advertising to consumers in the state of California.

10. At all times material to this incident, Defendant was registered with the California Secretary of State as a foreign entity doing business in the state of California and maintained its principal place of business in the City and County of San Francisco, within the state of California.

11. Venue in this case is proper in the Northern District of California by virtue of 28 U.S.C. §1391(a)(1)(2) and/or (3), and 38 U.S.C. §4323(c)(2). As a corporation, Defendant is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. 28 U.S.C. §1391(c). Defendant maintains its principal place of business within the Northern District of California. As such, Defendant is deemed to reside in the Northern District of California and is subject to personal jurisdiction.

12. Plaintiff hereby alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 11 as if copied herein.

13. Plaintiff has been a member of the USAR since September 2020, with a current rank of Captain (O-3).

14. Plaintiff was hired by Defendant as a remote senior sales engineer on December 6, 2021.

15. Plaintiff notified Defendant of his military service obligations when he was hired.

1 16. On August 15, 2022, Ms. Kathy Talman replaced Plaintiff's previous
2 manager, Mr. Michael Crosland.

3 17. On August 16, 2022, Plaintiff received orders to report to a cybercom
4 conference. Plaintiff was required to report to Fort George G. Meade in Maryland on
5 August 17, 2022, for a four (4) day duty period.

6 18. Plaintiff immediately notified his new supervisor, Ms. Talman of his orders.

7 19. When Plaintiff returned to work on August 22, 2022, Ms. Talman scheduled
8 a one-on-one Zoom meeting with him.

9 20. Plaintiff joined the meeting and was greeted by Ms. Talman and a
10 representative from Defendant's human resources ("HR") department, Ms. Rachel
11 Walter.

12 21. Ms. Talman informed Plaintiff that he was being terminated due to "poor
13 performance."

14 22. When Plaintiff asked Ms. Talman to provide him with specific instances of
15 his "poor performance," Ms. Talman refused to provide any instances.

16 23. Plaintiff had no written reprimands, verbal reprimands and/or disciplinary
17 actions taken against him during the period he served as a senior sales engineer.

18 24. Plaintiff was immediately terminated on August 22, 2022.

19 25. Plaintiff worked a total of two (2) days with his new supervisor, Ms. Talman.

20 26. Plaintiff was unlawfully terminated on his first day back from active duty
21 training and only his third day working with Ms. Talman.

22 27. Plaintiff's previous supervisor with Defendant, Mr. Crosland, wrote Plaintiff
23 a recommendation letter that highlighted Plaintiff's skills and contributions to Defendant.

24 28. Plaintiff's salary with Defendant was \$180,000 per year. Defendant also
25 provided a sales incentive compensation package that provided up to \$240,012 in
26 additional income. Further, Defendant provided an award of restricted stock units, valued
27 at \$65,000.
28

29. Plaintiff found comparable work on November 29, 2022. Plaintiff currently makes \$180,000 per year. However, his current employer does not provide opportunities for bonuses or stock options.

FIRST CAUSE OF ACTION

Violations of 38 U.S.C. § 4301, *et seq.*

30. Plaintiff hereby alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 29 as if copied herein.

31. USERRA prohibits “discrimination against persons because of their service in the uniformed services.” 38 U.S.C. § 4301(a)(3).

32. Plaintiff’s protected status as a USAR member was a substantial or motivating factor in Defendant’s denying Plaintiff benefits of employment without good cause, including but not limited to, terminating Plaintiff based on his military service obligations.

33. Section 4311 of USERRA provides, in relevant part, that a person “who is a member of, . . . performs, has performed, . . . or has an obligation to perform service in a uniformed service shall not be denied . . . reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, . . . performance of service, or obligation.”

34. Section 4311(c) further provides, in relevant part, that “[a]n employer shall be considered to have engaged in actions prohibited . . . if the person’s membership . . . or obligation for service in the uniformed services is a motivating factor in the employer’s action.”

35. Defendants knowingly and willfully violated USERRA by, among other ways, discriminating against Plaintiff, and by terminating his employment “on the basis of” his “obligation to perform service in a uniformed service.”

36. As a direct and proximate result of the conduct of defendant as set forth in this count, Plaintiff has suffered injuries and damages including but not limited to, loss

1 of past earnings and benefits, and loss of future earnings and benefits, all to his damage
2 in an amount to be proven at trial.

3 37. Plaintiff alleges such violations of USERRA were willful and requests
4 liquidated damages in an amount equal to the amount of his lost wages and other benefits
5 pursuant to 38 U.S.C. § 4323(d)(1)(C).

6 38. Pursuant to 38 U.S.C. § 4323(h), Plaintiff further requests an award of
7 reasonable attorney's fees, expert witness fees, and other litigation expenses.

8 **SECOND CAUSE OF ACTION**

9 **Violations of California Military and Veterans Code §394**

10 39. Plaintiff hereby alleges and incorporates all paragraphs 1-38 above by
11 reference herein.

12 40. Plaintiff brings this claim under California state law with federal court
13 jurisdiction being conferred by 28 U.S.C. §1367(a).

14 41. MVC §394 provides that no person shall discriminate against any member
15 of the military or naval forces of the United States because of that membership. Section
16 394 also provides “no member of the military forces shall be prejudiced or injured by
17 any... employer... or denied or disqualified for employment by virtue of membership
18 or service in the military forces of this state or of the United States.”

19 42. Defendant’s motive for terminating Plaintiff was his participation in the
20 USAR.

21 43. As a direct and proximate result of the conduct of Defendant, as set forth
22 in this count, Plaintiff has suffered injuries and damages including but not limited to,
23 loss of past and future earnings, loss of past and future benefits, all to his damage in an
24 amount to be proved at trial.

25 44. As a further direct result of the conduct of Defendant, as set forth in this
26 Count, Plaintiff suffered emotional distress including but not limited to, depression,
27
28

1 frustration, anger, loss of self-worth, and humiliation, all to this damage in an amount
2 to be proven at trial.

3 45. Pursuant to MVC §394(g), Plaintiff requests an award of attorneys' fees
4 against Defendant.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, based on the foregoing, Plaintiff, Stefan Stephenson-Moe, prays
7 for relief against Defendant, Splunk, Inc., as follows:

8 1. Declare that the acts and practices complained of herein are unlawful and
9 are in violation of USERRA, 38 U.S.C. § 4301, *et seq.*, and MVC §394;

10 2. Compensatory damages including lost wages, lost employee benefits, and
11 lost vacation and holiday benefits in an amount to be proven at trial;

12 3. Liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C);

13 4. Fees and expenses, including attorneys' fees pursuant to 38 U.S.C. § 4323(h)
14 and MVC §394(g);

15 5. Award Mr. Stephenson-Moe prejudgment interest on the amount of lost
16 wages or employment benefits found due;

17 5. Grant an award for costs of suit incurred; and,

18 6. Grant such other and further relief as may be just and proper and which Mr.
19 Stephenson-Moe may be entitled to under all applicable laws.

20
21 Respectfully Submitted,

22 Dated: May 4, 2023

23 PILOT LAW, P.C.

24 By: /s/ Brian J. Lawler

25 BRIAN J. LAWLER
26 Attorney for Plaintiff,
27 STEFAN STEPHENSON-MOE
28

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues triable as of right by a jury in the above action.

Respectfully Submitted,

Dated: May 4, 2023

PILOT LAW, P.C.

By: /s/ Brian J. Lawler

BRIAN J. LAWLER

Attorney for Plaintiff,

STEFAN STEPHENSON-MOE